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In The
Supreme Court of the United States

DONALD WEEMS and
MICHAEL BRIGGS,

Petitioners,

v.

LAWRENCE JOHNSON, CHIEF OF POLICE,
LITTLE ROCK POLICE DEPARTMENT, et al.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

BRIEF FOR RESPONDENTS PAULA STITZ, LARRY B. NORRIS, G. DAVID GUNTHARP, AND SHERI J. FLYNN IN OPPOSITION

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QUESTION PRESENTED

What procedural protections does the Fourteenth Amendment require during sex-offender risk assessments that are subject to administrative review, judicial review by state trial- and appellate-level courts, and further judicial review by the Supreme Court where those assessments are material to a determination of whether the offender may lawfully reside within 2000 feet of a school or daycare facility?

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OPINIONS BELOW

The decision of the court of appeals (Pet. 1a-18a) is reported at 453 F.3d 1010. The district court's Memorandum Opinion and Order granting the Respondents' motions to dismiss (Pet. 19a-57a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 13, 2006. Rehearing and rehearing en banc were denied on August 18, 2006. Justice Alito extended the time within which to file a petition for writ of certiorari until November 30, 2006, and the petition was filed on that date. The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

REGULATIONS INVOLVED

The *Sex Offender Guidelines & Procedures for Implementing Risk Assessment & Community Notification Regarding Sex Offenders* (June 2004) ("*Guidelines*") are reproduced in the appendix at 1a.

STATEMENT

The Arkansas General Assembly has determined that "sex offenders pose a high risk of reoffending after release from custody," that "protecting the public from sex offenders is a primary governmental interest," that "the privacy interest of persons adjudicated guilty of sex offenses is less important than the government's interest in public safety,"

and that "the release of certain information about sex offenders to criminal justice agencies and the general public will assist in protecting the public safety." Ark. Code Ann. § 12-12-902 (LEXIS through 2006 First Extraordinary Session). Thus, the General Assembly enacted the Sex and Child Offender Registration Act of 1997, Ark. Act No. 989, § 1 (1997), which is now known as the "Sex Offender Registration Act of 1997."[1] Ark. Code Ann. § 12-12-901 (2006). As provided in the Act, Ark. Code Ann. § 12-12-913(c)(3), rules and regulations for implementing the Act have been promulgated by the Sex Offender Assessment Committee. *Sex Offender Guidelines & Procedures for Implementing Risk Assessment & Community Notification Regarding Sex Offenders* (June 2004) ("*Guidelines*"). State Res. 1a.[2] The *Guidelines* identify factors relevant to a sex offender's "future dangerousness and likelihood of reoffense or threat to the community" and "also address the extent of the information to be disclosed and the scope of the community to whom disclosure shall be made[.]" Ark. Code Ann. § 12-12-913(c)(2).

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[1] As of this writing, the Arkansas General Assembly is in its 86th biennial regular legislative session. Thus far, it has passed Act 210, which, if approved by the Governor or otherwise enacted, would amend that part of the Act codified at Ark. Code Ann. § 12-12-903(12). The General Assembly also has passed, and the Governor has signed, Act 147, which, upon taking effect, will amend that part of the Act codified at Ark. Code Ann. § 12-12-913(g).

[2] The court of appeals' decision cites the January 2002 *Guidelines*, which were included in the Joint Appendix filed in that court. (Pet. 4a) A revised version of the *Guidelines*, however, went into effect in 2004. Thus, the State Respondents have reproduced those *Guidelines* in the appendix and, unless otherwise noted, will cite them throughout this brief. Another revision of the *Guidelines* has recently been made and is expected to be available online by following the link to "Sex Offender Guidelines" at: http://www.acic.org/Registration/.

The Act requires individuals who have been convicted of certain sex offenses to register with the State. *Id.* § 12-12-905(a) (2006). Failure to register is a felony offense. *Id.* § 12-12-904(a)(1)(A)(i). It is undisputed that the Act applies to the Petitioners.

The information that sex offenders are required to provide during registration includes their full name and all aliases; date of birth; gender; race; height; weight; hair and eye color; address; driver's license number; social security number; and, place of employment, education or training. *Id.* §§ 12-12-906(a)(1), -908(b). They are photographed and fingerprinted. *See id.* §§ 12-12-906(c)(1)(A)(iv), -908(b)(13) & (14). Sex offenders also are required to submit to an assessment designed to predict their future dangerousness and the risk that they will reoffend. *Id.* §§ 12-12-913(c)(2)(A), -917(b)(1).

Employees of the Arkansas Department of Correction perform risk assessments of adult sex offenders. *Guidelines* pgs. 3a, 20a; *see also* Ark. Code Ann. § 12-12-917(b)(2)(A)(ii) (requiring prosecuting attorneys and law-enforcement agencies to furnish their file concerning a sex offender to "Sex Offender Screening and Risk Assessment at the Department of Correction"). While conducting risk assessments of male sex offenders, examiners consider actuarial analyses, information obtained from interviews, psychological tests and evaluations, records and historical data, and, as appropriate, polygraphs or penile plethysmographs. *Guidelines* p. 20a. Risk assessments "screen for antisocial, psychopathic or other problematic personality characteristics, criminal thinking patterns, mental abnormalities affecting impulse control, sexual deviancies, paraphilias, preoccupation or compulsions, history of violence and other factors that may affect the level of risk

the offender poses to the community[.]" *Id.* at 21a (emphasis omitted). Assessments include intensive interviews "regarding patterns of behavior and life incidents[.]" *Id.* at 22a.

Offenders may be represented by counsel during the assessment process, but counsel is not allowed in the room while testing and interviews are conducted. *See* Ark. Code Ann. § 12-12-918(a)(2)(B) (providing that report to sentencing court recommending that an offender be classified as a sexually violent predator be forwarded "to the defense attorney"); *Guidelines* p. 8a (providing that some assessment records may be released to the offender and his attorney). Offenders have use immunity for statements about prior conduct made during the course of assessment. Ark. Code Ann. § 12-12-917(b)(4)(B); *see also Guidelines* p. 5a ("All information provided in the assessment has use immunity, which means that none of it can be used to prosecute the offender in a future court case or appeal"), p. 18a (informing sex offenders that statements made "with respect to prior conduct during the course of [the] assessment may not be used against [them] in any criminal case except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order granting immunity"), and p. 23a (stating that sex offenders have "'use immunity' which means that [admissions made during the interview] cannot be used against the individual in a court of law").

The records that the examiners may consider during risk assessments include, but are not limited to: police reports; statements of probable cause; presentence investigations and reports; judgments and sentences; current classification referrals; criminal history summaries; violation and disciplinary reports; all psychological evaluations

and psychiatric hospital reports; sex offender or sexually violent predator treatment program reports; juvenile court records; victim impact statements; investigation reports to the state's child abuse hotline; and, statements of medical providers treating victims of sex offenses indicating the extent of injury to the victim. Ark. Code Ann. § 12-12-917(c)(2). The examiners are not required to provide sex offenders with records generated by other agencies unless ordered by a court. *Id.* § 12-12-917(d)(2)(B)(i); *Guidelines* pgs. 54a-55a. Upon request, the examiners will give an offender or his counsel a list of records that they obtained from other agencies. *See* Ark. Code Ann. § 12-12-917(d)(2)(B)(ii). The examiners also will provide addresses of those agencies to them. *See Guidelines* p. 54a. The sex offender may then request a copy of the records from the appropriate agencies. Ark. Code Ann. § 12-12-917(d)(2)(B)(i). With the exception of restricted source documents of commercial psychological tests or working notes of staff, the Sex Offender Assessment Committee is required to give the sex offender access to records and information generated and maintained by the committee, including any reports of the assessment and the tape of the interview. *Id.* § 12-12-917(d)(2)(A); *see also Guidelines* p. 54a (stating that the Sex Offender Assessment Committee will not provide sex offenders with copies of "copyrighted psychological tests that are restricted to licensed professionals.")

The *Guidelines* describe four risk classifications, ranging from Level 1 (low risk), to Level 4 (sexually violent predator). *Guidelines* pgs. 23a-24a. The assessments of Weems and Briggs determined that they would be classified at Level 3 (high risk). (Pet. 7a.) The *Guidelines* define Level 3 as follows:

> 3. **High risk:** These individuals usually have histories of repeat sexual offending, and/or strong antisocial, violent or predatory personality characteristics. Sexual compulsions are likely to be present, but may be kept under control when relapse prevention plans are followed and treatment is continued. The offense patterns of these individuals reflect a relatively high probability of re-offense and/or a risk of substantial injury to victims should re-offense occur.

Guidelines p. 24a (emphasis in original).

The *Guidelines* recognize that "[s]ome flexibility is required in the risk assessment procedure to take into account special circumstances of a particular case that either are not sufficiently considered, or require more emphasis than afforded, in the actuarial prediction model." *Id.* at 25a (emphasis omitted). Thus, "[t]he actuarially based portion of the risk assessment is subject to overrides and departures related to special circumstances, facts and psychological disorders affecting the level of risk posed by an individual." *Id.* at 5a (emphasis omitted). All overrides and departures must be approved by a licensed psychologist or psychiatrist. *Id.* Overrides and departures are subject to review by the Sex Offender Assessment Committee. *Id.* at 28a.

Examples of behavior by an offender that may justify an override, or increase, of his risk classification include: prior commission of sex offenses, making statements that suggest a higher risk level than that predicted by the actuarial model, committing an offense involving extreme physical injury or death, and deliberately providing false information to the examiner. *Id.* at 25a-26a. In addition,

"If the clinical team determines that the offender suffers from a mental abnormality, physical condition, addiction or other psychological impairment that decreases his/her ability to control sexual impulses, or increases his/her potential for sexual violence, his/her risk level may be increased." *Id.* at 26a (emphasis omitted).

Examples of circumstances that may justify a departure, or decrease, of a sex offender's risk classification include: treatment that significantly decreases his predisposition to re-offend, his offense pattern suggests that his conduct was a temporary aberration, and a recantation by the victim. *Id.* at 26a-27a.

Higher risk levels lead to more widespread notice to the public that the individual is a sex offender. *Id.* at 38a; *see also* Ark. Code Ann. § 12-12-913(c)(2)(B)(i) (requiring the *Guidelines* to account for the "[l]evel of the sex offender's dangerousness" when addressing the extent of information about him to be disclosed to the community and the scope of the community to whom that disclosure will be made). In the case of a Level 1 sex offender, the *Guidelines* generally call for notification to law-enforcement agencies in the offender's jurisdiction, adult members of the offender's household, and victims or guardians of victims. *Guidelines* pgs. 39a-40a. If the offender is classified as Level 2, then notification also includes the heads of agencies and organizations that serve individuals in the offender's target group, state licensing boards and prospective employers that have asked to receive notification or those that might bring the offender and potential victims into contact with one another, and the heads of families with members who are of the age and gender of the offender's target group and who are likely to encounter the offenders. *Id.* at 40a. Level

3 classifications result in additional notification to any member of the community who the offender is likely to encounter. *Id.* 40a-41a. In the event of Level 4 classification, additional notification is given to members of the general public in the vicinity of where the offender lives, travels and works. *Id.* at 41a. Community meetings may be used to notify the public with regard to Level 4 offenders. *Id.* at 42a. Community notification concerning Level 3 and 4 offenders includes putting information concerning them on the internet. *Id.* at 41a.

Arkansas Code Annotated § 5-14-128 (2006) provides, with certain exceptions, that it is a felony offense for Level 3 and 4 sex offenders to reside within 2000 feet of property on which a school or daycare facility is located.[3] (Pet. 77a)

A sex offender may request an administrative review of the assessment by a member of the Sex Offender Assessment Committee. Ark. Code Ann. §§ 12-12-917(g)(2)(A), -922(b)(6)(A). The offender must clearly state the basis of his request and attach any documentary evidence supporting it. *Id.* § 12-12-922(b)(3)(A). Grounds for administrative review of the assessment are:

> (i) The rules and procedures were not properly followed in reaching a decision on the risk level of the sex offender;
>
> (ii) Documents or information not available at the time of assessment have a bearing on the

[3] The Petitioners erroneously assert that the 2000 foot residency restriction is part of the Sex Offender Registration Act. (Pet. 3) It is not. The residency restriction is codified in Title 5 of the Arkansas Code. The Sex Offender Registration Act is codified in Title 12.

> risk that the sex offender poses to the community; or
>
> (iii) The assessment is not supported by substantial evidence.

Id. § 12-12-922(b)(3)(B).

The administrative review is based on the assessment record previously compiled. No testimony is taken. *Guidelines* p. 33a. The offenders may, however, request "a copy of each document generated by the examiners, a listing by document name and source of any document available from another agency having custody of the document, and a copy of the tape of the interview." Ark. Code Ann. § 12-12-922(b)(1)(B). If the reviewer determines that the assessment level should not be changed, then he or she notifies the offender. *Guidelines* p. 33a. If the reviewer determines that the assessment level should be changed, then he or she forwards that recommendation to the committee for a vote on the question. *Id.* "If a request for an administrative review is received by the committee, law enforcement may make community notification only at the level immediately below the level upon which review has been requested." Ark. Code Ann. § 12-12-922(b)(5).

Pursuant to Ark. Code Ann. § 12-12-922(b)(7)(A)(ii), sex offenders who are not satisfied with the results of an administrative review may obtain judicial review from a state circuit court under Arkansas' Administrative Procedure Act, which is codified at Ark. Code Ann. § 25-15-201, *et seq.* (Repl. 2002 & Supp. 2005). The circuit court's review is on the administrative record, unless there is an allegation that there was an irregularity in the administrative proceedings that does not appear in the record, in which case testimony may be taken. *Id.* § 25-15-212(g)

(Repl. 2002). If requested, the court will hear argument and receive briefs. *Id.* The court may grant a sex offender's request for leave to present additional evidence to the Sex Offender Assessment Committee if the court finds that the evidence is material and that there were good reasons for failure to present it in the administrative proceedings. *See id.* § 25-15-212(f). In that event, the committee may "modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court." *Id.* The court may

> affirm the decision of the agency or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
>
> (2) In excess of the agency's statutory authority;
>
> (3) Made upon unlawful procedure;
>
> (4) Affected by other error or law;
>
> (5) Not supported by substantial evidence of record; or
>
> (6) Arbitrary, capricious, or characterized by abuse of discretion.

Ark. Code Ann. § 25-15-212(h) (Repl. 2003).

Sex offenders may appeal the circuit court's orders to Arkansas' Court of Appeals or Supreme Court. *See, e.g.*, *Roe v. Arkansas Department of Correction*, 367 Ark. 348,

___ S.W.3d ___ (2006) (sex offender's appeal to Arkansas Supreme Court dismissed for lack of final order); *Arkansas Department of Correction v. Claybaugh*, 93 Ark. App. 11, 29-30, ___ S.W.3d ___ (2005) (reversing sex offender's risk assessment); *see also* Ark. Code Ann. § 12-12-922(b)(9) (providing that "[a] ruling by the circuit court on the petition for judicial review is considered a final judgment."). Sex offenders also may appeal to this Court.

Lifetime registration is required for sex offenders found to have committed an aggravated sex offense, determined by a court to be a sexually violent predator, or found to have been adjudicated guilty of a second or subsequent sex offense under a separate case number. Ark. Code Ann. § 12-12-919(a). Other sex offenders who were convicted in Arkansas may apply to the sentencing court for an order terminating the obligation to register fifteen years "after release from incarceration or other institution or fifteen (15) years after having been placed on probation or any other form of community supervision[.]" *Id.* § 12-12-919(b)(1)(A)(i). Sex offenders who were convicted in another state but permanently reside in Arkansas may apply to a court in the county in which they reside for an order terminating their obligation to register. *Id.* § 12-12-919(b)(1)(A)(ii). Sex offenders also may request reassessment every five years after their initial assessment. *Id.* § 12-12-917(h).

REASONS FOR DENYING THE PETITION

The question presented by the Petitioners concerns only the procedural protections afforded to sex offenders during the initial risk assessment. The Petitioners frame

their question presented in terms of "'dangerousness' assessments," not the administrative or judicial review thereof. (Pet. i) When explaining why they believe certiorari should be granted, the Petitioners restate their question by asking: "Under the U.S. Constitution, what are the minimal procedural due process protections required *in risk or dangerousness assessments* of sex offenders where the assessments are material to the application of regulatory statutes against sex offenders?" (Pet. 6, emphasis added.) In discussing this question, the Petitioners assert that "[t]here are no provisions within the Registration Act or the Sex Offender Guidelines and Procedures that allow a sex offender to be represented by an attorney, to confront witnesses, or to see all of the documentary evidence *used in the initial assessment*." (Pet. 8, emphasis added.) (As noted below, these contentions are in error.) Petitioners concede that judicial review under Arkansas' Administrative Procedure Act is available during which offenders are "allowed to have counsel, confront witnesses, and receive copies of the evidence to be used against them." (Pet. 8, n.4) Thus, there can be no doubt that the Petitioners' question is limited to the procedural protections in place during initial risk assessments.

There is no split of authority concerning the procedures required by the Fourteenth Amendment during sex-offender risk assessments; and, the question of the appropriate burden of proof during those assessments is not compelling as demonstrated by the fact that the Petitioners did not raise or brief that question in the Eighth Circuit.

A. There is not a split of authority concerning the procedures required by the Fourteenth Amendment during sex-offender risk assessments because the assessment procedures at issue in the cases that the Petitioners contend conflict with the Eighth Circuit's decision are remarkably different from Arkansas' assessment procedures.

1. Neither the Sex Offender Registration Act nor the *Guidelines* prohibit sex offenders from having assistance of counsel while preparing for the assessment, from obtaining copies of the documents considered by the examiners, or from challenging statements contained in those documents.

Sex offenders may be represented by counsel. *See* Ark. Code Ann. § 12-12-918(a)(2)(B); *Guidelines* p. 8a. With limited exceptions for copyrighted psychological tests and working notes of staff, the offender and his attorney have access to all Sex Offender Assessment Committee records used in the assessment. *See* Ark. Code Ann. § 12-12-917(d)(2)(A); *Guidelines* p. 54a. The examiners also provide sex offenders and their attorneys with lists of records obtained from other agencies, as well as the addresses of those agencies. *See* Ark. Code Ann. § 12-12-917(d)(2)(B)(ii); *Guidelines* p. 54a. Hence, sex offenders and their attorneys may easily request copies of those records from the appropriate agencies. Moreover, many of the records considered by the examiners are routinely available to sex offenders and their attorneys during the course of sex-offense prosecutions. Those documents include police reports; statements of probable cause; pre-sentence investigations and reports; judgments and sentences; criminal history summaries; psychological evaluations and psychiatric hospital reports; juvenile court records; victim impact

statements; and, statements of medical providers treating victims of sex offenses indicating the extent of injury to the victim. *See* Ark. Code Ann. § 12-12-917(c)(2) (listing documents considered during risk assessments). Other records, such as current classification referrals, violation and disciplinary reports, sex offender or sexually violent predator treatment program reports, and investigation reports to the state's child abuse hotline concern the offenders themselves and would thus customarily be available to them and their attorneys. *See id.*; *see also* Ark. Code Ann. § 12-12-506(a)(2)(A)(iii) (Supp. 2005) (providing that the subject of a true report made pursuant to the Arkansas Child Maltreatment Act may obtain a copy of the report).

Neither the Act nor the *Guidelines* prohibit sex offenders and their attorneys from submitting to the examiners any documents that they believe would support a lower risk assessment. Accordingly, for example, if a sex offender has information that rebuts a witness statement contained in a document to be considered by the examiners, then he may present that information to the examiner before or during the assessment interview.

It is the examiners' general practice not to allow counsel to accompany sex offenders during the assessment interview, but the Act and *Guidelines* do not prohibit sex offenders from consulting with counsel before the interview. Nothing prohibits sex offenders from leaving the room to consult with counsel before answering a question during an interview. Moreover, sex offenders have use immunity for statements about prior conduct made during the course of assessment. Ark. Code Ann. § 12-12-917(b)(4)(B); *see also Guidelines* pgs. 5a, 18a, & 23a.

For these reasons, the State Respondents respectfully submit that the Petitioners' suggestion that sex offenders are prevented from having any assistance from counsel, from examining documents considered during the assessment, and from challenging witness statements that appear in those documents is incorrect.

2. The decision of the Court of Appeals in this case, as well as purportedly conflicting decisions from other jurisdictions, turned on the application of the *Mathews v. Eldridge* balancing test to the unique facts of each case, and do not reflect any disagreement on the operative legal standards.

In *Mathews v. Eldridge*, this Court articulated a three-factor balancing test for determining whether existing procedures sufficiently guard against erroneous deprivations of life, liberty, or property:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id., 424 U.S. 319, 335 (1976). The Eighth Circuit applied this test to Arkansas' Sex Offender Registration Act and its implementation guidelines and held that they satisfy the Constitution's procedural due process requirements. (Pet. 14a-18a) As required by *Mathews v. Eldridge*, the

Eighth Circuit analyzed the specific procedures at issue in this case. The Eighth Circuit considered that

> [b]efore a team operating under the oversight of the Sex Offender Assessment Committee may assign a risk level to an offender, the team conducts a thorough review of official records and historical data, performs psychological testing and evaluation, undertakes actuarial analyses, and conducts a personal interview with the offender. The offender has an opportunity to be heard through the interview, and may access most records and information maintained by the committee. Ark. Code Ann. § 12-12-917(d)(2)(A). The examination team typically follows an actuarial prediction model based on objective criteria, but the Guidelines do permit "some flexibility" to account for "special circumstances" of a particular case that are not adequately considered in the model. These "overrides" and "departures" permit the examiners to increase or decrease the assigned level based on special circumstances. *Guidelines,* at 14-15. Any such adjustment must be "fully documented," and it is subject to review by the Sex Offender Assessment Committee. *Id.* at 15.

(Pet. 15a)

While sex offenders have "an interest in avoiding inaccurate community notification or an unwarranted residency restriction," the Eighth Circuit recognized that Arkansas' "Guidelines do not permit notification of a 'high risk' assessment, which triggers the residency restriction and may bring greater opprobrium than notification in accordance with Level 1 or 2 status, until after the conclusion of an administrative review." (Pet. 15a) The Eighth Circuit determined that "the risk of erroneous deprivation

is negligible" prior to administrative review because "[a]lthough examiners believe that the offender is a 'high risk,' the community may be notified only that the offender presents a 'moderate risk,' and the offender's criminal record – which almost certainly implies at least some level of risk – is already a matter of public record." (Pet. 15a-16a) Thus, Arkansas' administrative review "ensures that the sex offender's assessment is considered by both the examination team and the Sex Offender Review Committee before a Level 3 assessment is implemented." (Pet. 16a)

The Eighth Circuit also recognized that the focus of risk assessments in Arkansas is "on psychological evaluations and clinical judgments[.]" (Pet. 17a) Thus, the court determined that allowing sex offenders to bring attorneys and confront witnesses during the initial assessment would not be likely to "appreciably reduce the risk of an erroneous determination," but "would entail rather significant fiscal and administrative burdens." (Pet. 17a) Based on this through analysis of Arkansas' sex-offender-assessment procedures, the Eighth Circuit held that they satisfied the Procedural Due Process Clause. (Pet. 18a)

The New Jersey sex-offender-assessment procedures that were at issue in *Doe v. Poritz* are entirely different than Arkansas' procedures. Indeed, the New Jersey law at issue in that case required the prosecutor in the county in which a sex offender resided to determine his risk level. *Id.*, 142 N.J. 1, 22-23, 662 A.2d 367, 378 (New Jersey 1995). It is apparent that there could be no administrative review of a prosecutor's risk-level determination. Consequently, it comes as no surprise that the New Jersey Supreme Court held that application of the *Mathews v. Eldridge* balancing test to those facts led to the conclusion

that sex offenders in that State were entitled to judicial review unless assigned to that State's lowest risk level. *Poritz*, 142 N.J. at 107, 662 A.2d at 421. *Poritz* does not hold that due process mandates judicial hearings at the initial assessment stage; it only holds that a prosecutor's decision to provide community notification, including manner of notification, is subject to judicial review before such notification is given. *Id.*, 142 N.J. at 12, 107, 662 A.2d at 372, 421.

In contrast with New Jersey's practice of allowing prosecutors to perform risk assessments, Arkansas' "assessment is designed to be thorough and complex, drawing on historical records, psychological evaluations, and actuarial techniques. Deviations from the actuarial prediction models are designed to be 'used sparingly,' only with the approval of 'senior clinical staff,' and are subject to review by the Sex Offender Assessment Committee." (Pet. 16a) As a result, the New Jersey Supreme Court's decision in *Poritz* does not conflict with the Eighth Circuit's decision in *Weems*.

Two New York risk-assessment-procedure tracks were at issue in *Doe v. Pataki*, 3 F.Supp.2d 456, 471 (S.D.N.Y. 1998). One track was for sex offenders who were incarcerated when the New York Sex Offender Registration Act took effect. *Id.* at 459. An administrative board would recommend a risk level to the sentencing court, and the court would make a final risk-level determination. *Id.* at 462-63. There could be no appeal. *Id.* at 465. The issue with regard to sex offenders on this track concerned the judicial procedures at the sentencing court. *Id.* at 459-61. The *Pataki* court concluded that those procedures permitted

> a convicted sex offender to be classified at a risk level that subjects him to community notification on the basis of a perfunctory proceeding or incorrect information, that fails to provide a full and fair opportunity to be heard or legal representation, that places the burden on him to prove that the Board's findings were wrong without disclosing to him the bases for those findings, and that offers no avenue for appellate review even in the face of gross error does not pass constitutional muster.

Id. at 461.

The other track was for sex offenders who were on probation or parole when the registration act took effect. *Id.* at 459. Those offender's risk levels were assessed by probation or parole officers who had received one day of training on conducting risk assessments. *Id.* at 463. Their assessment decisions were reviewed by a member of New York's Board of Examiners of Sex Offenders or its designee. *Id.* The sex offender was notified only after the assessment had been completed. *Id.*

The court applied the *Mathews v. Eldridge* balancing test and concluded that neither track satisfied the Constitution's procedural due process requirements. *Id.* at 468-72. *Pataki* does not conflict with *Weems* with regard to either track. First, New York's judicial procedures for incarcerated sex offenders at the sentencing court bear little, if any, resemblance to Arkansas' judicial procedures. Among other things, Arkansas sex offenders get an opportunity to see the evidence and seek relief in the appellate courts. Furthermore, the Petitioners here challenge Arkansas' procedures during the initial risk assessment, not the judicial review thereof. Thus, the portion of the

court's decision in *Pataki* regarding judicial review procedures does not support the present petition. Second, New York's initial-assessment procedures for sex offenders who were on probation or parole have absolutely no resemblance to Arkansas' initial-assessment procedures. Arkansas notifies sex offenders about the initial assessment, gives them an opportunity to review the evidence, and gives them an opportunity to be heard during a personal interview. New York did not notify them until after the initial assessment had been completed, so they could neither review the evidence nor be heard during an interview with the person conducting the assessment. As a result, the initial-assessment procedures at issue in *Pataki* and *Weems* are so different that there is no conflict between them.

The Oregon risk-assessment procedures at issue in *Nobel v. Board of Parole and Post-Prison Supervision* significantly differ from Arkansas' risk-assessment procedures. The pivotal facts in the Oregon Supreme Court's *Mathews v. Eldridge* analysis were that the risk assessment at issue was subjective and based on confidential information that was not disclosed to the offender. *Id.*, 327 Ore. 485, 497, 964 P.2d, 990, 996 (1998). Moreover, *Noble* contains no suggestion that Oregon's assessment procedures included an interview of the offender. *Id.* Thus, Oregon offenders could not challenge the evidence even if it were not confidential. In contrast to the subjective and secretive nature of Oregon's risk assessments, Arkansas' risk assessments include actuarial analyses, psychological testing and evaluation, a polygraph or penile plethysmograph, and a review of relevant records. Arkansas' assessment procedures allow offenders to obtain copies of those records and dispute them during face-to-face

interviews with an examiner. Given the differences between the Oregon and Arkansas risk-assessment procedures, *Nobel* does not conflict with *Weems*.

In sum, there are considerable factual differences in the risk-assessment systems at issue in *Weems*, *Poritz*, *Pataki*, and *Nobel*. Consequently, the results of the *Mathews v. Eldridge* balancing test in *Poritz*, *Pataki*, and *Nobel* do not support the Petitioners' assertions that the result of the Eighth Circuit's application of that test in *Weems* is incorrect and that the decision in the present case conflicts with the other cited decisions as a matter of law.

B. The question of the appropriate burden of proof during sex-offender risk assessments is not compelling as demonstrated by the fact that the Petitioners did not brief that question in the Eighth Circuit.

Petitioners attempt to raise for the first time in this Court a claim regarding the appropriate burden of proof in sex-offender risk assessments. None of the Petitioners' pleadings in the Eighth Circuit, including their initial brief, reply brief, and Petition for Rehearing and Rehearing En Banc, ever raised such an issue. Thus, it is not surprising that the Eighth Circuit did not decide that question or even discuss it. If the Court were to issue the writ, then the Petitioners would ask it to reverse the Eighth Circuit on a question that the court of appeals never considered. Rule 10 of this Court's Rules makes clear that the Court will issue a writ of certiorari "only for compelling reasons." Sup. Ct. R. 10. Petitioners cannot fairly assert that the question of the appropriate burden of

proof during sex-offender risk assessments is compelling when they never raised that issue in the court of appeals.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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SEX OFFENDER GUIDELINES AND PROCEDURES

FOR IMPLEMENTING RISK ASSESSMENT AND COMMUNITY NOTIFICATION REGARDING SEX OFFENDERS

(revised June 2004)

BACKGROUND

On June 19, 1998, the U.S. Department of Justice published Proposed Guidelines in the Federal Register (63 FR 33696) to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by "Megan's Law," the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and §115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998. The Wetterling Act was further modified by the "Campus Sex Crimes Prevention Act" (§1601 of Public Law 106-386). This federal law, enacted October 28th, 2000, provides for the tracking of, and availability of **notification** information, to the campus community about, convicted, registered sex offenders enrolled as students, working or volunteering at institutions of higher education. These requirements are tied to state eligibility for certain types of federal grant funding and must be implemented through state law.

The 81st General Assembly of the State of Arkansas passed HB1061, which became Act 989, "The Sex and Child Offender Registration Act of 1997." This legislation was amended by the 82nd General Assembly of the state of Arkansas passing of House Bill 1963 which became Act 1353 of 1999. Act 1353 was modified by Acts 1740 and 1743 in the 83rd General Assembly. Acts 1740 and 1743 were combined and amended into Act 21 of the 2nd extraordinary session of the 84th General Assembly. Because

the assessment and registration requirements are different for juveniles adjudicated as sex offenders, the law relating to juvenile sex offenders was revised in Act 1265 of 2003. Current code section references are Arkansas Code Annotated §§12-12-901 through 922, and for juveniles §9-27-356. The intent of these various Acts is to protect the people of Arkansas from victimization by individuals who have previously engaged in this type of criminal activity.

The law provides for the appointment by the governor of a Sex Offender Assessment Committee, which includes:

- A defense attorney
- A prosecuting attorney
- Two licensed mental health professionals
- A victim's rights advocate
- A law enforcement officer
- The director of the Arkansas Department of Correction, or the director's designee
- The director of the Arkansas Crime Information Center, or the director's designee
- The director of the Department of Community Correction, or the director's designee
- A member with expertise in juvenile justice or treatment.

The Sex Offender Assessment Committee is charged with promulgating guidelines and procedures for disclosure of relevant and necessary information to the public when the release of the information is necessary for the public protection. Those guidelines include protocols for **risk**

assessment and criteria to assist the courts in determining whether a person convicted of a sexual or violent offense is a **sexually violent predator**. The committee qualifies examiners to perform assessments under this law, and certifies treatment providers.

Maintenance of the Sex Offender Registry and Web Site, and responsibility for tracking of sex offenders in the community is vested in the **Arkansas Crime Information Center (ACIC)**. Contact may be made through the Internet, http://www.acic.org/. The Internet links provide statistical information as well as individual information on high-risk offenders and **sexually violent predators**. Correspondence may be directed to the **Arkansas Crime Information Center**, One Capitol Mall, Little Rock, AR 72201. The phone number for **ACIC** is (501) 682-2222.

The staff who carry out the assessment procedures of the Sex Offender Assessment Committee are employees of the Arkansas Department of Correction. Correspondence to the Sex Offender Assessment Committee and to the staff for Sex Offender Screening and Risk Assessment may be directed to Post Office Box 6209, Pine Bluff AR 71611-6209, faxed to (870)850-8446, or E-mailed to **adc.sosra@arkansas.gov**. Phone contact may be made through (870) 850-8429.

OVERVIEW OF THE REGISTRATION, ASSESSMENT & NOTIFICTATION [sic] PROCESS

1. ***Target Offenses.*** Adults found guilty or found not guilty by reason of mental disease or defect, or who were incarcerated, on parole or probation, or were in the state hospital related to a ***target offense*** on or after August 1, 1997 are required to register and submit to **risk assessment**. (In the case of adjudication in juvenile court, the judge determines whether or not

registration is to be required.) Individuals who are rearrested for a subsequent ***target offense*** must be **reassessed.**

2. ***Arkansas Crime Information Center (ACIC).*** Any offender, adult or juvenile who would be required to register in the jurisdiction in which he or she was adjudicated, who is newly convicted or previously convicted and moving into an area or enrolling, working or volunteering in an institution of higher education or training, is responsible for presenting himself or herself to the Chief Law Enforcement Officer who will see that he or she is registered with, and tracked by, the ***Arkansas Crime Information Center (ACIC).*** (Failure to maintain registration is a Class D felony.) Questions about registration should be directed to **ACIC.**

3. ***Residency.*** Adults and juveniles from outside of Arkansas who have been or would be required to register by the laws of the jurisdiction in which they were adjudicated are required to be assessed and to register if they spend more than 14 consecutive days or more than 30 aggregate days a year ***residing*** in Arkansas or entering Arkansas for employment, education or training.

4. ***Sex Offender Screening Advisement.*** Each individual required to register is provided a ***Sex Offender Screening Advisement*** that details the **risk assessment** process along with the forms notifying him/her of the duty to register. The Department of Community Correction provides advisements to known sex offenders moving into Arkansas, if the offender is under supervision. Law enforcement offices may obtain forms from the ***ACIC*** website, for those individuals who are required to register, but are no longer under supervision.

5. ***Qualifications.*** **Only examiners qualified by the Sex Offender Assessment Committee may do risk assessments.** The Sex Offender Assessment Committee will also develop a list of ***treatment providers*** who meet education, specific sex offender training, and practice guidelines.

6. ***Risk assessment.*** The **assessment** produces an estimate of ***level of risk*** to the community, a report regarding factors that appear to influence the manifestation of inappropriate sexual behavior, and the age(s) and genders(s) of known victims. The staff doing the assessment ask questions about patterns of sexual behavior during the assessment. All information provided in the assessment has use immunity, which means that none of it can be used to prosecute the offender in a future court case or appeal.

7. ***Risk Levels.*** Four ***levels of risk*** are used: Level 1 – Low Risk; Level 2 – Moderate Risk; Level 3 – High Risk; and Level 4 – **Sexually Violent Predator.**

8. ***Overrides and Departures.*** The actuarially based portion of the **risk assessment** is subject to ***overrides*** and ***departures*** related to special circumstances, facts and psychological disorders affecting the **level of risk** posed by an individual. A licensed psychologist or psychiatrist must approve all overrides and departures.

9. The ***Offender Fact Sheet*** and the ***Risk Assessment Report*** are the documents sent to the chief of police, sheriff and prosecutor who have jurisdiction where the offender **resides**, and to **ACIC**, and to the Arkansas State Police. Certified law enforcement authorities, licensing and certification boards and **ACIC** may access **offender fact sheets** through a web site or request database searches for aid in solving crimes.

The offender may request a copy of the ***offender fact sheet.***

10. ***Administrative Review.*** The offender has ten days from the receipt of **notification** or risk level to request ***administrative review*** of his/her **risk assessment**. He or she must present written justification for that review. Reviews are justified on the basis of previously unavailable information or allegations that these guidelines were not followed.

11. ***Judicial review*** of assigned **risk level** may be requested by an offender who does not accept the findings of the ***Administrative Review. Judicial Reviews*** *follow the Administrative Procedures Act as stated in ACA §§25-15-201 et seq.*

12. ***Notification.*** If the offender requests an ***administrative*** or a ***judicial review***, **notification** will proceed at one ***risk level*** below that being questioned until the matter is resolved. The Chief Law Enforcement Officer having jurisdiction is responsible for ***notification*** of the appropriate agencies and citizens according to the **notification** plan. (**Notification** must reoccur as demanded by circumstances.)

13. ***Notification guidelines*** based on ***level of risk*** are provided with each assessment. The Chief Law Enforcement Officer must meet the minimum requirements of **notification**, but may modify optional parts of the plan to fit the needs of the community.

14. ***Reassessment*** of offenders who have been previously classified at **risk levels** one (1) through three (3) may be requested at any time by the court, Post Prison Transfer Board or law enforcement if high risk behaviors are suspected, or every 5 years by the offender.

15. ***Termination of Registration.*** The registration requirement for ***sexually violent predators, recidivists***

and those convicted or found not guilty by reason of mental disease or defect of an ***aggravated sex offense,*** or attempt thereof, is for life and may not be ***terminated.*** The registration requirement for offenders convicted of a **target offense** that does not qualify as an ***aggravated sex offense*** may be **terminated** upon completion of fifteen years of registration by order of the sentencing court, or order of the court in the jurisdiction in which the offender lives, if the offender was sentenced by an authority other than an Arkansas court. Additional flexibility is allowed for ***termination*** of the registration requirement for juveniles.

16. ***Aggravated sex offenses*** are those offenses that involve engaging or attempting to engage in a sexual act with a person younger than 12 years of age, or by causing a person of any age to engage in a sexual act by force or threat of serious violence, or by engaging or attempting to engage in sexual activity with a person after rendering that person unconscious or unable to appraise or control conduct. The sentencing court must indicate on the judgment and commitment order or judgment and disposition form whether the offense qualifies as an ***aggravated sex offense (U.S.C. Title 18, Section 2241).***

17. ***Sexually Violent Offense:*** Any *actual or attempted* rape or rape-like offense – i.e., non-consensual sexual assault crimes involving penetration – regardless of the age of the victim, or acts with intent to engage in sexual activity with a child under twelve years of age This includes **aggravated sex offenses** (18 USC 2241) and sexual abuse as defined in (18 USC 2242).

18. ***Sexually Violent Predator. Sexually Violent Predator*** means a person who has been adjudicated guilty, or acquitted on the grounds of mental disease or defect of a ***sexually violent offense,*** *or is*

convicted of second or subsequent sexual offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in future predatory ***sexually violent offenses.***

19. ***Records.*** Records of assessments will be maintained on electronic media indefinitely. These records are not subject to the Freedom of Information Act, but some parts may be released to the offender or his/her attorney under certain circumstances

20. ***Research:*** Continuous efforts will be made to better understand and assess the risks associated with sex offending through ***research.***

21. Individuals carrying out the tasks prescribed by law and these regulations are provided ***immunity*** for their good-faith actions under the law.

TARGET OFFENSES (Section 1)

Generally **target offenses** include (42 U.S.C. 14071 a, (3) A and B):

- Kidnapping of a minor, except by a parent;
- False imprisonment of a minor, except by a parent;
- Criminal sexual conduct toward a minor;
- Solicitation of a minor to engage in sexual conduct;
- Use of a minor in a sexual performance;
- Solicitation of a minor to practice prostitution;
- Any conduct that by its nature is a sexual offense against a minor;
- Any **sexually violent offense** regardless of the age of the victim (18 U.S.C. Sections 2241 and 2242);

- An attempt to commit any of the above offenses if the legislature chooses to make such an attempt a criminal offense requiring registration;
- Exceptions to the above may be made if the act is criminal based on the age of the victim and the perpetrator is 18 years of age or younger;
- Any other offense that the Arkansas Legislature chooses to include as a sexual offense or violent offense against a child.

Some offenses such as "stalking" may not have sexually motivated component. In such cases the Court will determine whether or not the individual should be required to register.

1. Kidnapping of a minor, not by a parent §5-11-102
2. False imprisonment 1st not by a parent §5-11-103
3. False imprisonment 2nd degree, not by a parent §5-11-104
4. Permanent detention or restraint of a minor, not by a parent §5-11-106
5. Rape §5-14-103
6. Sexual indecency with a child §5-14-110
7. Public Sexual Indecency §5-14-111
8. Indecent exposure, if a felony offense §5-14-112
9. Exposing another person to HIV, when ordered by the Court to Register §5-14-123
10. Sexual Assault 1st degree §5-14-124
11. Sexual Assault 2nd degree §5-14-125

12. Sexual Assault 3rd degree §5-14-126

13. Sexual Assault 4th degree §5-14-127

14. Incest §5-26-202

15. Permitting abuse of a child §5-27-221

16. Engaging children in sexually explicit Conduct for use in visual or print medium §5-27-303

17. Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, §5-27-304

18. Transportation of minors for prohibited sexual conduct §5-27-305

19. Employing or consenting to the use of a child in a sexual performance §5-27-402

20. Producing, directing or promoting a sexual performance §5-27-403

21. Distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child §5-27-602

22. Computer child pornography §5-27-603

23. Computer exploitation of a child §5-27-605

24. Promoting prostitution in the first degree §5-70-104

25. Stalking when ordered by the court to register §5-71-229

26. False attempt, solicitation, or conspiracy to commit any of the above offenses.

This list of target offenses is not exclusive. The registration requirement extends to the requirements of other

states, and similar juvenile, tribal, military or other federal offenses. Newly enacted sex offenses or current **target offenses** subsequently modified by legislation will be considered **target offenses** unless otherwise specified by the legislature. The sentencing court has the authority to order the registration of any offender shown in court to have attempted to commit or to have committed a sex offense, even though the offense is not listed as a **target offense**. Any individual, living in or moving into Arkansas, or regularly entering Arkansas for employment, education or training, who has been convicted of a **target offense** or a differently titled, but equivalent offense by a federal court, tribal court, military court, or the court of another state, that is the substantial equivalent of a **target offense**, is required to register, and to submit to **risk assessment**.

ARKANSAS CRIME INFORMATION CENTER (ACIC) (Section 2)

The **Arkansas Crime Information Center (ACIC)** is the agency responsible for tracking all sex offenders who are required to register.

From the point of initial registration, the offender must notify ACIC in writing of any change in residence address *not later than 10 days prior* to leaving the address of the offender's current registration. Some latitude is allowed for emergency change of address as in the case of a dwelling fire or natural disaster.

Offenders are required to return a verification of **residence** address every 6 months (every three months for an offender adjudicated as a **Sexually Violent Predator**). *This verification is required even if there has been no*

change of address. The six-month period begins with first registration. Individuals who are incarcerated or housed in a state institution that does not allow them into the community are not required to verify their address until ten days prior to their release or a change of status that allows them access to the community. Law enforcement is encouraged to check that the offender actually **resides** at the address given.

An offender who fails to register or to report changes of address as required, may be charged with a Class D felony, and if found guilty may be sentenced to up to six years and fined up to $10,000. Any offender meeting ACIC criteria of "delinquent" or "address unknown" will have his/her Offender Fact Sheet placed on the public section of the web page until registration requirements have been met.

Sex Offender Registration Form

Reporting this information is required by ACA §12-12-904. This form shall be sent to the Arkansas Crime Information Center within 3 days after completion for entry into the state and national Sex Offender Registration Files.

Type or Print Black Ink Only | Sentencing Court | Registered as: Sex or Child Offender ☐ (Check Box) Sexually Violent Predator ☐

Offender's Last Name	First Name	Middle Name	AKA or Alias Last Name	First Name	Middle Name

Date of Birth	Race	Sex	Height Ft In	Weight	Hair Color	Eye Color	Social Security #

State Ident # (Arkansas SID)	F B I # (if available)	Driver License #	ID Card #	State of DL or ID Card

Scars/Marks/Tattoos

Sex or Child Offense Information (If additional space is needed, list on separate sheet and attach to this form)

Date of Arrest	Arresting Agency	Offense for which found guilty or acquitted by reason	Arrest Tracking #
Date of Arrest	Arresting Agency	Offense for which found guilty or acquitted by reason	Arrest Tracking #
Date of Arrest	Arresting Agency	Offense for which found guilty or acquitted by reason	Arrest Tracking #

Institute of Higher Education (known or anticipated) **(If currently attending/volunteering/ employed, check here** ☐

Name of Institute	Location

Residence Address (known or anticipated) **Mailing Address** (if different from residence, for example P.O.Box)

Street #, Street Name; RR # & Box; Apt #; Mobile Home # (Do not use P.O. Box here)					Street #, Street Name; RR # & Box; Apt #; Mobile Home # or P.O. Box #		
City	**County**	**State**	**Zip**	**Phone #**	**City**	**State**	**Zip**

Place of Employment **Address of Employment**

Name of Employer (company and/or individual)	Street # Street Name/ RR# & Box	City	State	Zip	Phone #

Brief Description of the Crime(s) for which this registration is required

Victim Information	Age Victim 1	Race Victim 1	Sex Victim 1	Offender Relationship to Victim 1	Age Victim 2	Race Victim 2	Sex Victim 2	Offender Relationship to Victim 2

If Assessed Indicate: Assessment Level _____ **Date Assessed**_____ **Assessed by:**_____

Acknowledgement by Offender

I hereby acknowledge that I have been advised of my duty to register as a sex or child offender, or sexually violent predator, as required by Arkansas ACA §12-12-904. I have also been advised that failure to regularly verify my address or failure to report any change of address as required under ACA §12-12-904 constitutes a Class D felony and may result in my subsequent arrest and prosecution.

Registering Agency or Court	Changes Registration? YES NO (circle one)
Address	City and Zip
Name (Printed) of official completing this form	Area Code & Phone #

_____
Signature of Offender

_____
Date

This Form shall be sent to the **Arkansas Crime Information Center, One Capitol Mall, Little Rock, AR 72201.** Failure to complete and forward this form to ACIC within 3 days after registering an offender is a Class B Misdemeanor under ACA § 12-12-904. (ACIC SOR Form 07-25-02)

13a

Arkansas Crime Information Center

State Sex Offender Registry

Change of Address Form for Registered Sex Offenders

Please complete the following information and mail or fax to the Arkansas Crime Information Center within five days of receipt of this form in order for your record to be promptly updated.

Form Completed by: _____ **Date Form Completed:**_____
(If other than the offender)
Jurisdictional Agency Name (If Applicable)_____

Offender Name:_____ **Race:** _____ **Sex:** _____

Date of Birth: _____ Social Security No:_____

Previous Address:

_____
Street or Rural Route No. & Box

_____
City_____ State____Zip_____

Institute of Higher Education:

_____
Name of Institution

If Currently Attending Check Here: ☐

Place Of Employment:

_____
Name of Employer (company or individual)
If unemployed, state unemployed.

Address Of Employer:
Street or Rural Route No. & Box

_____
City State Zip

*Telephone No.( )*_____

New Mailing Address: (May use PO Box if not your residence)

_____
Street or Rural Route No. & Box

_____
City_____ State____Zip_____

Telephone No. ( )_____

Date Moved or Planning to Move _____

New Place of Residence: if different from new mailing address: (Do not use PO box for residence!)

_____
Street or Rural Route No. & box
City State Zip_____

If new place of residence has been physically verified, sign below

_____ | _____
Law enforcement official only *Date verified*

Signature of Offender: _____ **Date Signed:** _____
(Required)

Failure to report any change of address as required by Act 989 of 1997 as amended constitutes a Class D Felony and may result in subsequent arrest and prosecution.

Arkansas Crime Information Center ? One Capitol Mall ? Little Rock, AR 72201?(501) 682-2222 FAX:(501) 682-2269
Rev. 08/09/02

ACIC can release information regarding individual offenders only to members of the criminal justice system. However, if a member of the public believes that a sex offender should have registered, but did not, or has changed address or employment without proper **notification**, information may be given to ***ACIC*** by calling (501) 682-2222 or sending an E-mail to pstitz@acic.state.ar.us. While ***ACIC*** cannot release information on the individual except to law enforcement, all information from the public will be checked out.

ACIC operates two web sites. One is accessible to law enforcement only and contains detailed information on all registered sex offenders. The other is accessible to the general public and provides information on Level 3 (high risk) and Level 4 (**Sexually violent predators**).

Should questions arise about the registration process, **ACIC** maintains a web site, http://www.acic.org/.

RESIDENCY (Section 3)

Residence in a jurisdiction is not limited to dwelling full time in that jurisdiction. For purposes of registration, for example, a sex offender with a legal residence in downtown Clarksville in Johnson County may attend the University of Arkansas and reside during the week in a house in Washington County, returning to Johnson County for weekends and holidays. For purposes of registration that individual should register with the Chief of Police of Clarksville, as well as Campus Safety at the University of Arkansas, and with the Sheriff of Washington County. Similarly a resident of West Memphis who works in Memphis must register with both the West Memphis (Arkansas) and the Memphis (Tennessee) authorities.

Residence is defined temporally by whether the individual spends 14 consecutive days or more in a location (e.g. a three week vacation at Lake Hamilton should result in notification of Garland County authorities), or an aggregate of more than 30 days a year, (e.g. a salesman with a weekly sales route through several counties).

Any change of status (new job, becoming or ceasing to be a student, etc. must be brought to the immediate attention of **ACIC**.

Any offender moving to, or returning to, Arkansas is required to register with local law enforcement within 30 days of establishing residency. Offenders moving into Arkansas, who have been, or would be, required to register in the jurisdiction in which they were sentenced, are also required to undergo **reassessment**, submit a DNA sample, and pay $250 to the DNA detection Fund established under §§ 12-12-1101 & 1102.

Any offender moving into or out of the state must inform **ACIC** at least ten days prior to the move, and must register with the appropriate law enforcement agency in the new state.

SEX OFFENDER SCREENING ADVISEMENT (Section 4)

Upon receipt of the Judgment and Disposition the Department of Community Correction provides the offender who is being released to community supervision copies of the **ACIC** Sex Offender Registration Form and the document **"Sex Offender Screening Advisement."** This document is intended to inform the offender of the

requirements and procedures for **risk assessment**, and the limits on confidentiality. Having read the document, the offender indicates his/her willingness or refusal to undergo **risk assessment**. *Should the offender refuse **risk assessment**, he/she is classified at the "high" **level of risk**.* DCC then mails a copy of the signed document to SOSRA. P.O. Box 6209, Pine Bluff, AR 71611-6209.

Offenders who are sentenced to the Arkansas Department of Correction will be given the advisement and complete the **ACIC** Sex Offender Registration Form at the point of intake, or as soon as possible thereafter.

Individuals found Not Guilty by Reason of mental disease or defect will complete the **ACIC** Sex Offender Registration Form at the State Hospital and be given the **Sex Offender Screening Advisement**. The evaluation interview and testing will usually be conducted at the State Hospital when, in the opinion of ASH clinical staff, the mental status of the individual allows.

The "**Sex Offender Screening Advisement**" document is available from the **ACIC** web site for any law enforcement agency registering an individual from another state who meets the registration requirements for Arkansas but is not under supervision of the Arkansas Department of Correction or the Arkansas Department of Community Correction.

To prevent gaps, SOSRA will request the **ACIC** to provide a monthly listing of **target offense** convictions.

SEX OFFENDER SCREENING
AND RISK ASSESSMENT
CONSENT/REFUSAL/DISCLOSURE FORM

As an individual convicted of a sex offense or an offense against a child, you are required to by law to submit to an assessment to determine the level of risk that you pose to the general public. A team operating under the oversight of the Sex Offender Assessment Committee will conduct this assessment. The assessment procedures involve: A) a thorough review of official records pertaining to your sexual offense(s) and other criminal history, B) psychological tests as deemed necessary, C) a face-to-face interview, and D) any other methods the team deems necessary to accurately assess your risk, including but not limited to a polygraph examination. You will be photographed, may be video or audio taped, and may be asked to provide a DNA sample (four drops of blood from a finger) and be fingerprinted if necessary. The assessment is based primarily on documented information as opposed to the opinions of your examiner. The information gathered from you may also be used in research projects. This information cannot be used in the sentencing portion of your trial. Statements you make with respect to prior conduct during the course of your assessment may not be used against you in any criminal case except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order granting immunity.

You may refuse this assessment. If you refuse the assessment you will be assigned a Level 3, "HIGH risk" (or possibly greater). If you consent to this assessment but withhold information, give false information or seriously compromise the assessment team's ability to do a fair and accurate assessment on you, you will be assigned a Level

3, "HIGH" risk" (or greater). The chief law enforcement officer where you live will notify those persons who have a need to know of your **risk level**. Any refusal or non-compliance will be made known to the sentencing court and supervising authorities.

An **Offender Fact Sheet** summarizing the results of the assessment will be available to the sentencing court, the Post Prison Transfer Broad [sic] if you are incarcerated, the Department of Community Correction if you are under parole or probation supervision, and the chief law enforcement officer of your jurisdiction for purposes of supervision, and to you. Beyond that, the Sex Offender Screening & Risk Assessment Program will make every effort to keep the information confidential, with the exception of information indicating that any identifiable individual is presently at risk of violent or sexual assault by you.

Authority for sex offender risk assessment and community notification is found in Ark. Code Ann. §§12-12-901 and following sections. Assessment guidelines and procedures are issued under the authority of the Arkansas Administrative Procedures Act, which provides for administrative review of agency rules and decisions. *See* Ark. Code Ann. §§25-15-201 and following sections.

Please read the following disclosure statement carefully, print your name and then initial one of the boxes below.

I, _____, understand that the Sex Offender Screening and Risk Assessment Program will be providing a risk rating to the **Arkansas Crime Information Center**. I also understand that all information provided to the Sex Offender Screening and Risk Assessment

Program is subject to disclosure to those authorized by law to receive it.

I have read and understand the terms and conditions of the assessment outlined above.

[ ] I agree to comply with the assessment. [ ] I refuse to be assessed.

Signed_____ Date:_____/_____/_____

Witness_____ Date:_____/_____/_____.

QUALIFICATION OF EXAMINERS (Section 5)

Risk assessments of adult offenders are currently done through the Arkansas Department of Correction. The Family Treatment Program, through Children's Hospital and the University of Arkansas for Medical Sciences does assessments of juvenile offenders according to standards and procedures developed by that organization and approved by the Sex Offender Assessment Committee.

The assessment team will be required to be qualified by the Sex Offender Assessment Committee. **Qualifications** will be renewed annually at the January organizational meeting.

RISK ASSESSMENT (Section 6)

Assessment of adult male offender risk will be based on actuarial analysis, information obtained from interview, psychological testing and evaluation, review of relevant records and historical data, and polygraph or penile plethysmograph, if deemed necessary by the team conducting the evaluation.

Proven actuarial instruments are not as well standardized for adult female offenders. Therefore, assessments of female offenders may depend more on other methods such as risk factors deduced through history review and interview, voice stress analysis and polygraph.

Different techniques are also used with juveniles and will be those chosen by the Family Treatment Program in consultation with the Sex Offender Assessment Committee.

These procedures will screen for antisocial, psychopathic or other problematic personality characteristics, criminal thinking patterns, mental abnormalities affecting impulse control, sexual deviancies, paraphilias, preoccupation or compulsions, history of violence and other factors that may affect the **level of risk** the offender poses to the community or have a bearing on treatment or supervision plans.

Risk assessment of adults who have been previously convicted and assessed by law enforcement will be considered valid for purposes of registration and **notification**. **Risk assessments** done by other agencies will only be considered if they were recorded by **ACIC**.

All letters concerning scheduling will be sent certified, restricted delivery mail to the last verified address available to **ACIC**. **ACIC** will be notified of any letters returned as undeliverable. The offender will be considered non-compliant if a response is not received within 14 days of the date of receipt of the communication as indicated on U.S. Postal Service documentation. The Department of Community Correction and/or local law enforcement will be asked by **ACIC** for assistance in locating the offender.

Any individual not presenting him or herself for assessment will be considered non-compliant and classified at **risk Level** 3 until the **risk assessment** is completed. If arrangements for assessment are not made within 5 days of a missed appointment, the individual will remain Level 3 pending the next five-year assessment or a request for assessment from the court or chief law enforcement officer. This provision may be waived by vote of the Sex Offender Assessment Committee upon presentation of documentation that the offender was unable to comply due to hospitalization, incarceration, natural disaster, or the like. The chief law enforcement officer having jurisdiction, the sentencing court, and the Department of Community Correction will be notified of any instances of non-compliance.

Sex offenders newly convicted as adults will be referred to the offices of Sex Offender Screening and Risk Assessment in Pine Bluff. Juvenile offenders will be referred to the Family Treatment Program at Children's Hospital. Offenders sentenced to the Arkansas Department of Correction will be assessed as resources are available to complete these assessments. Incarcerated offenders may be **reassessed** as needed during the course of their incarceration, with the **risk assessment** being given final review at the point of release. Any offender placed on probation will be given a form advising him/her of the requirements and the process for setting up an appointment.

The assessment process consists of an intensive interview regarding patterns of behavior and life incidents that are relevant to actuarial and clinical assessment. The questions are direct and often deal with areas that people are not comfortable talking about. Prior to the interview, documents have been requested from law enforcement,

prosecutors, treatment programs, and any other sources that have relevant information. It is important that the person being interviewed answer the questions openly and honestly. If the answers do not match up with the documents previously obtained, the interviewer may conclude that the individual is withholding information or being deceptive. Non-compliance in an interview may lead to a higher risk level determination than the individual would receive if he or she were being open and honest. The reason for this is that the Sex Offender Assessment Committee believes that if the individual who is being deceptive about his/her sexual behavior and not accepting responsibility for it, poses a greater risk to the community.

At the same time, law protects any admissions made by the individual during the interview. They have "use immunity" which means that they cannot be used against the individual in a court of law. Thus the individual does not need to fear incriminating him or herself by revealing behaviors that have not been previously charged, or are related to cases that are under appeal. In this way the individual's fifth amendment rights are protected.

LEVEL OF RISK FOR ADULT AND JUVENILE OFFENDERS (Section 7)

Based on historical data and information obtained from the **risk assessment** process, offenders are assigned to the following **levels of risk** to the general public:

1. **Low risk**: Usually these are individuals with no prior history of sexual acting out, and no strong antisocial tendencies, sexual compulsions or psychological factors impairing judgment.

2. **Moderate risk:** Usually these are individuals with limited or circumscribed prior history of sexual acting out, possess some antisocial personality characteristics, predatory tendencies, or deviant sexual interest or behavioral patterns that increase the general **level of risk** these offenders pose. They may have mild or well-controlled mental disorders, and/or developmental disabilities.

3. **High risk:** These individuals usually have histories of repeat sexual offending, and/or strong antisocial, violent or predatory personality characteristics. Sexual compulsions are likely to be present, but may be kept under control when relapse prevention plans are followed and treatment is continued. The offense patterns of these individuals reflect a relatively high probability of re-offense and/or a risk of substantial injury to victims should re-offense occur.

4. **Sexually Violent Predator**: These are individuals with impaired judgment or control who have sexual or violent compulsions that they lack the ability to control. This may be due to pedophilia or other disorder of sexual attraction, mental illness or personality disorder that distorts thinking, interferes with behavioral control, and predisposes the person to acts of predatory sexual violence.

Individuals who refuse assessment will be classified as being "high risk." Individuals who attempt to conceal or lie about their behavioral histories will similarly be classified "high risk." The court may make the determination that an individual is a **Sexually Violent Predator** even if a valid assessment cannot be produced due to refusal to cooperate or apparent efforts to deceive the examiner.

OVERRIDES AND DEPARTURES (Section 8)

Some flexibility is required in the **risk assessment** procedure to take into account special circumstances of a particular case that either are not sufficiently considered, or require more emphasis than afforded, in the actuarial prediction model. The following **overrides** and **departures** represent the primary (but not exclusive) causes to modify the actuarial risk assessment. They are used sparingly and only with the approval of senior clinical staff, and may differ for juveniles. Only the court may assign Level 4, **Sexually Violent Predator**.

Overrides

1. If the offender has committed previous juvenile or adult sexual offense(s), or has multiple current offenses (involving different victims, times, and/or circumstances), he/she should be deemed to pose the highest **level of risk**. This may extend to known or self-admitted molestations, offense [sic] that were reported and reliably investigated even if not prosecuted, and offenses primarily sexual in nature but pleaded down to non-sexual offenses.

2. If statements made by the offender during the interview, or certain features of the psychological assessment, or the judgment of clinical staff, or relevant historical data suggest higher risk than the actuarial model predicts, the offender may be assigned to a higher **risk level**.

3. If the offense involved extreme physical injury, death, or other heinous actions, the

offender should be assigned to the highest **level of risk**.

4. If the offender has provided information on record or during the interview that he/she is likely to commit subsequent **sexually violent offenses**, he/she should be assigned to the highest **level of risk**.

5. If the offender is deemed to have provided deliberately false or misleading information to the assessment team, or provides answers on a standardized test that meet the criteria for invalidity his/her **level of risk** may be increased.

6. If the offender refuses to submit to, or seriously compromises, the interview and assessment process, his/her level may be raised to the high **risk level**, and or the offender may be considered by the Sex Offender Assessment Committee for a recommendation to the court for consideration as a **sexually violent predator**.

If the clinical team determines that the offender suffers from a mental abnormality, physical condition, addiction or other psychological impairment that decreases his/her ability to control sexual impulses, or increases his/her potential for sexual violence, his/her **risk level** may be increased.

Departures

1. If treatment, behavioral, anti-androgen or other, is believed to significantly enhance the offender's impulse control ability and to decrease the predisposition to reoffend, and

the professional providing treatment indicates a willingness to work with Sex Offender Screening and Risk Assessment, the offender may be assigned to a lower **risk level**, unless the offender has been classified at Level 4, **Sexually Violent Predator**. Should the offender withdraw from treatment against the advice of the therapist, or become more predisposed to reoffend in the view of the therapist, the therapist will notify Sex Offender Screening and Risk Assessment. The offender will revert to his/her previous **risk level** and law enforcement will be notified.

2. If there are aspects to the offense pattern that suggest that the sexual acting out was a temporary aberration unlikely to recur, or the nature and pattern of the offense is such that it poses less of a risk to the community at large, his/her **risk level** may be decreased.

3. If the offender's current **risk assessment** data is at such variance with aspects of the official record (E.g. the alleged victim recanted, or the spouse admitted that the allegations were confabulated out of spite), his/her **risk level** may be decreased.

4. Adolescent offenders in a residential treatment program, group home, therapeutic foster care, foster care, or other appropriately supervised placement may be assigned to a lower **level of risk**. The adolescent will revert to his/her higher **level of risk**, should he/she stop treatment or become noncompliant with the supervision and/or safety plan.

Any **departure** or **override** will be fully documented and is subject to review by the Sex Offender Assessment Committee.

OFFENDER FACT SHEET (Section 9)

The results of the assessment are summarized as an **"Offender Fact Sheet."**

The **"Offender Fact Sheet"** will be completed on a web-based application maintained by **Arkansas Crime Information Center (ACIC). ACIC**, Law Enforcement Agencies, the Department of Community Correction, the Post Prison Transfer Board and social service agencies may be provided a password to allow complete access to the database. This password will be changed regularly, and the Internet address of all individuals accessing the database will be tracked. The chief law enforcement officer having primary jurisdiction over the campus of an institution for training or educations shall have access to the web-based application file of the fact sheets on all registered sex offenders maintained by the **Arkansas Crime Information Center.**

The database may be queried by *modus operandi*, weapon, victim age and gender, area of the state, physical description, description of the subject vehicle, and such other information likely to aid in ongoing investigations. Certain information such as Social Security Number, Driver's License Number, and information about employers or victims that is available to law enforcement, may not be available to the public.

Any one determined to be an appropriate party to receive **notification** may view the **Offender Fact Sheet**, with

certain information (such as Social Security number) deleted, at the discretion of law enforcement. Any individual receiving **notification** should be advised against publishing or sharing the **notification** beyond the individuals, families or agencies specified in the **notification** plan. Any individual notified should be advised that harassment of sex offenders is against the law.

The **offender fact sheet** will include:

- Offender's full name and known aliases
- Date of birth
- Physical description
- Hair and eye color
- Scars, marks or tattoos
- Address of temporary **residence**
- Anticipated address of legal **residence**
- Driver's License Number or State Identification Number
- Social Security Number
- Place of employment
- Photograph
- Fingerprint Code (if available)
- State Police Identifying Number (SID) (if available)
- Criminal history
- Brief description of crime for which registration was required
- *Modus operandi* and/or weapons used in committing sex offenses

- **Risk level**
- Factors likely to influence **risk level**
- Date of DNA sample
- Victim preferences
- Treatment history and recommendations

Copies of the **Offender Fact Sheet** are made available by the Arkansas Department of Correction to:

- The **Arkansas Crime Information Center (ACIC);**
- The sheriff and/or chief of police of the city and/or county in which the offender resides;
- Parole or probation (if the offender is under Department of Community Correction supervision or Juvenile Probation);
- The Post Prison Transfer Board (if the offender is currently incarcerated);
- Any therapeutic program in which the offender is enrolled;
- The offender;
- Any law enforcement agency requesting the **Offender Fact Sheet;**
- Any court in which the offender is a party to the proceedings;
- The chief law enforcement officer having primary jurisdiction over the campus of an institution for training or education, in those cases in which Sex Offender Screening and Risk Assessment is made aware that the offender is a student, part or full-time employee, or volunteer on a campus covered by this act.

The Chief Law Enforcement Officer **must** make the **Offender Fact Sheet** available to the victim and members of the community indicated in the **Notification** Guidelines. An abbreviated version of the **Offender Fact Sheet** will be available off the Internet for this purpose.

The following is a cover letter suggested as a model to be provided with any **Offender Fact Sheet**:

> The [*insert name of the law enforcement agency*] is releasing the attached information pursuant to Act 989 of 1997 as amended, and guidelines provided by the Sex Offender Assessment Committee established by that law.
>
> The individual who appears on the attached Fact Sheet has been convicted of an offense that requires registration with the **Arkansas Crime Information Center**. This individual is not wanted by law enforcement at this time. No action on your part is required other than the type of alertness and caution that increases the safety of individuals, families, neighborhoods and communities. Should you observe suspicious behavior on the part of this individual, do not take action on your own, but immediately notify law enforcement. You may not share this information with others, except those who have a need to know (other adult members of your family, if this is a family **notification**; coworkers in a position to prevent harm, if this is an agency **notification**).
>
> This **notification** is not intended to cause alarm. Nor may you use this information to intimidate or harass the person identified. Harassment of any individual is against the law. We are all better protected if this individual makes a

successful adjustment and maintains control over deviant sexual impulses.

If you feel you need further information about the dynamics of sex offending, you may contact the Arkansas Commission on Child Abuse, Rape and Domestic Violence, 4301 W. Markham, Slot 606, Little Rock, AR 72205. Phone contact may be made through (501) 661-7975.

ADMINISTRATIVE REVIEW (Section 10)

The Sex Offender Assessment Committee shall appoint (a) member(s) to do **administrative reviews** of **risk assessments**. The duty of the **administrative reviewer** shall be to ensure that these guidelines and procedures have been followed in a thorough and objective manner, and that any documents or official records not available at the time of the **risk assessment** are brought to the attention of the assessment team who will determine whether the information has a bearing on public risk.

Each adult offender will be notified of his/her **level of risk**, and the **notification** guidelines accompanying it. **Notification** will be by registered mail to the address provided to the **Arkansas Crime Information Center** for purposes of registration. He or she will have fifteen (15) days from the date of receipt to send written justification for an **administrative review** to Sex Offender Screening and Risk Assessment, P. O Box 6209, Pine Bluff, AR 71611-6209. If needed evidence is not in the possession of the offender, he/she should identify the agency holding the evidence, and request an extension of time, not to exceed an additional fifteen (15) days.

The offender may initiate an **administrative review** on either or both of the following bases:

1. The offender has, or can direct Sex Offender Screening and Risk Assessment (SOSRA) to, documents that were unavailable to SOSRA at the time of assessment and are related to the actuarial method used in the determination of **level of risk**. Unsupported allegations made by the offender will not be considered.

2. The offender alleges that the regulations listed herein were not followed or followed in a manner inconsistent with the spirit of the Sex Offender Registration Act. The offender must show probable error, prejudice or negligence committed by an individual or individuals involved in the **risk assessment**.

Requests for an **administrative review** based on a dislike of the **level of risk** assigned to the offender, the unfairness of the system, or legal questions related to the original adjudication and sentencing will not be considered. The **administrative review** is based on document and record review only, the offender has no right to appear or call witnesses.

A juvenile offender may request **administrative review** of his/her assessment only if he/she is required by the juvenile court to register. At that time he/she will be advised of his/her rights to request the **administrative review** procedure shown below.

The Secretary of the Sex Offender Assessment Committee will conduct reviews. Should the Secretary feel that a change in **level of risk** is warranted, the recommendation will be taken up by the full committee. The offender will be notified of the results of the review, except in the case of

random quality improvement reviews. Copies of the Secretary's response will be sent to the offender, the chief law enforcement officer of the city and/or county in which the offender **resides**, **ACIC**, and the Sex Offender Assessment Committee. Any member of the Sex Offender Assessment Committee may ask to see source documents or question the **administrative reviewer** regarding the reasoning behind the recommendation.

The decision of the **administrative reviewer** will exhaust administrative remedies available to the offender. If the offender wishes to pursue the matter further, he or she may file for a **Judicial Review**. Pending the outcome of administrative or **judicial reviews**, **notification** will be restricted to that required for one level below the level being reviewed.

JUDICIAL REVIEW (Section 11)

Upon receipt of the findings of the ***administrative review***, the offender has thirty (30) days to file a petition under the Arkansas Administrative Procedures act in Pulaski County Circuit Court or in the Circuit Court of the county in which the offender **resides**, requesting **judicial review** of the **risk level**. The Court will accept the request for a review only if the offender demonstrates that administrative remedies have been exhausted.

When served notice by the Court that the offender has exhausted his/her administrative remedies and the appeal for review has been accepted by the Court, the Sex Offender Assessment Committee will, within thirty days, provide the Court with copies of all records in its possession. The Committee may ask the court to seal statements

of victims, medical records, and such items that could place third parties at risk of harm.

A ruling by the Court on a petition for **Judicial Review** shall be considered final, and **Offender Fact Sheets** reflecting that level shall be issued to law enforcement, and **notification** at the level approved by the Court shall commence.

NOTIFICATION PROCEDURES (Section 12)

The **Offender Fact Sheet** will be sent to law enforcement to begin **notification** about twenty working days after the receipt of the **Offender Fact Sheet** by the offender, unless a request for an **administrative review** has been received. If an **administrative review** is requested, the **Offender Fact Sheet** will not be sent to law enforcement, and notification shall not commence. If the Sex Offender Assessment Committee determines that a Level three (3) or Level four (4) offender poses a particular danger to the community, an **Offender Fact Sheet** reflecting a **risk level** one step below the level being reviewed may be sent to law enforcement.

If the **administrative review** results in no changes to the **Offender Fact Sheet**, the offender will be advised of his/her right to a **judicial review**. If the offender files for a **judicial review**, the **offender fact sheet** will be sent to law enforcement and community **notification** will commence at one level below that being reviewed, unless this has already been done.

All parties to whom the **Offender Fact Sheet** is sent will be notified of the outcome of the **judicial review**, and will

be instructed to commence (continue) **notification** at the approved level.

The law enforcement officer having jurisdiction over an offender shall review the **notification** guidelines and procedures, and the **offender fact sheet**. Prior to **notification**, the law enforcement agency should visit the listed address to ensure that the subject of the **notification** is, in fact, **residing** or about to reside there. **Any discrepancies on the Offender Fact Sheet should be immediately brought to the attention of Sex Offender Screening and Risk Assessment (Phone (870) 850-8429 or FAX: (870) 850-8446).**

The sheriff or chief of police has the authority to go beyond **notification** guidelines in consultation with multidisciplinary teams, the prosecuting attorney, parole and probation officers, social service agencies, and any other agency or individual who has direct involvement in protecting the community from sex crimes. Any step beyond the **notification** guidelines should have a strong rationale behind it. That rationale should be clearly stated in the **notification** plan.

Notification regarding juvenile offenders will only occur if ordered by the juvenile court.

Should the individual relocate to a new address outside the area covered by the previous **notification** but remain within the jurisdiction of the Chief Law Enforcement Officer, the **notification** plan should be modified, and **notifications** reissued 10 days prior to the move, or as soon as possible following the move. Should the offender move outside the jurisdiction, it is the responsibility of the offender to notify **ACIC** prior to the move. **ACIC** will notify the sheriff and chief of police of the new jurisdiction.

The Chief Law Enforcement Officer must follow the guidelines, but may with good reason, add to or expand **notification** to accommodate circumstances, and is responsible for all community **notification**. For example, community **notification** of the presence of a high-risk rapist who targets adult women would not necessarily follow the same pattern as **notification** regarding a pedophile that targets preadolescent boys.

The Chief Law Enforcement Officer is encouraged to consult multidisciplinary teams, the prosecuting attorney, parole and probation officers, treatment providers, other law enforcement agencies, and any other community resources in preparing the **notification** plan. The plan should be a specific written document showing:

1. Who in the community is to be notified
2. Who participated in the preparation of the plan
3. The approval of the Chief Law Enforcement Officer, or designee
4. The date the plan was made, and dates of **notification**.

A copy of the **notification** plan should be mailed to Sex Offender Screening and Risk Assessment (SOSRA).

Only the Chief Law Enforcement Officer, or designee, is permitted to perform notifications regarding sex offenders to members of the community. Any inquiries from the public will be directed to the Chief Law Enforcement Officer. If feasible, the Chief Law Enforcement Officer will be advised to expect the inquiry. The Sex Offender Assessment Committee retains the authority to respond to questions

from court and law enforcement, departments of correction, parole and probation, and registration authorities in other states.

NOTIFICATION GUIDELINES (Section 13)

The **notification** guidelines indicate which segments of the community must be notified. **Notification given to any individual or agency does not authorize that individual or agency to disseminate information beyond those residing with the individual, or those who have a need to know within the agency.**

Generally, the higher the **risk** level assigned, the broader the **notification** that **must** be given. These **notification** guidelines apply to adult offenders and to juvenile offenders ordered by the court to register. The guidelines should be interpreted narrowly in the case of a juvenile in accordance with the level of confidentiality afforded by the juvenile justice system. **It is the responsibility of the Chief Law Enforcement Officer to interpret these guidelines and prepare a notification plan.** Should circumstances change that may increase the offender's risk to the community, it is the responsibility of the Chief Law Enforcement Officer to modify the existing **notification** plan or request a **reassessment**.

Discretion must be used in applying the guidelines to any offender. The harm that may be caused by a particular **notification** must be weighed against the protection that would be afforded the public. For example, notifying the neighbors about a Level 1 or Level 2 incest offender may further victimize the offender's spouse and child if the offender's family is known in the community.

The initial steps toward **notification** occur as part of the **risk assessment** process. The Arkansas Department of Correction is responsible for notifying the sheriff and the chief of police, **ACIC**, the offender, any supervising agencies and the victim. Sheriffs and chiefs of police are encouraged to have a written working agreement to ensure that all offenders in their jurisdictions are properly registered. The **notification** guidelines shown below and any special recommendations will be attached to the **Offender Fact Sheet**.

Level 1/Low Risk

- The law enforcement agency having jurisdiction, and other law enforcement agencies likely to encounter the offender. This may include state and federal law enforcement agencies, campus police, school safety officers, and the like.
- The offender. The fact sheet will be mailed to the offender at the same time that it is mailed to the Chief Law Enforcement Officer having jurisdiction. If the offender requests an **administrative review**, the Chief Law Enforcement Officer will be notified and asked to limit community **notification** to that indicated for Level I and any citizens thought to be at immediate risk, until the review has been completed.
- All adult members of the household where the offender is **residing** or intends to **reside**, unless the offender is **residing** or intends to **reside** in a residential treatment facility, group home, foster home, half-way house or other supervised living arrangement, in which case only the residence supervisor or foster parent should be notified.

- Victims or guardians of victims of adult offenders are notified through the VINE system operated by the Arkansas Department of Correction. Victims or guardians of victims of juvenile offenders should be notified by law enforcement.

Level 2/Moderate risk

- All parties specified in level 1 ***must*** be notified.
- The heads of agencies and organizations that serve individuals in the offender's target group must be notified. This may include, but is not limited to, schools, day care centers, community and youth groups, religious organizations, libraries, the Department of Human Services, women's organizations and shelters, park security, businesses frequented by children.
- State licensing boards and prospective employers will be notified, if requested by the licensing board or by the human resources manager for the employer, or if law enforcement sees the type of employment as bringing the offender and potential victims into contact.
- The heads of families or individuals with members that are of the age and gender of the offender's target group and are likely to encounter the offender, or live in the same neighborhood as the offender must be notified.

Level 3/high risk

- **All of the entities and individuals listed for Levels 1 and 2 must be notified**, including those designated as "discretionary" unless to do so would cause harm to the victim(s).

- **Notification** must be made to any member of the community whom the offender is known to be likely to encounter, based on the offender's prior history, recreational or religious interests, employment, or the characteristics of the offender's victims.

- **Notification** should be conducted by methods *devised* to notify all members of the public likely to encounter the offender. This should be done face-to-face between law enforcement and citizens to the extent possible. Those likely to encounter the offender, including all neighbors, are to be given an **Offender Fact Sheet** and cautioned about the appropriate use of the information.

- **Offender Fact Sheet** information on offenders rated at Level 3 (high risk) or Level 4 (**Sexually Violent Predator**) will be available to the public on the **ACIC** web site (http://www.acic.org/).

Level 4/Sexually Violent Predator

- **All of the entities and individuals listed for Levels 1 through 3 must be notified.**

- **Notification** of members of the general public in the vicinity of where the offender lives, travels and works should be done. It is preferable to notify these individuals in a face-to-face meeting, and to encourage assistance in monitoring the offender rather than instigating harassment, fear or hatred. However, open community meetings or meetings with neighborhood watch groups are also acceptable.

- Any individual having good reason may request an **Offender Fact Sheet** from the Chief Law

Enforcement Officer. Each individual given an **Offender Fact Sheet** must be advised that it is not for publication, but may only be used in accordance with the law and these guidelines.

- The Department of Community Correction will be asked to provide intensive supervision, if the offender falls under the jurisdiction of that agency.
- Polygraphing will be done on **reassessments**, unless clearly contraindicated in the view of the Sex Offender Assessment Committee.
- Community meetings may be held to inform residents of the area in which the offender is likely to be found.
- Printed material, posters, and electronic media may be used to notify and inform the public in the most necessary and potentially dangerous situations.
- The **Offender Fact Sheets** of all **Sexually Violent Predators** will be available to the public on the **ACIC** website.

REASSESSMENT (Section 14)

The adult offenders, classified Levels 1 through 3, may request **reassessment** five years after the date of the most recent **risk assessment. Reassessments** will, at the discretion of the Sex Offender Assessment Committee, include a polygraph, voice stress analysis or plethysmograph (measure of sexual interest examination). The cost of polygraph, voice stress analysis and/or plethysmograph examinations will be billed to the person being **reassessed**.

The juvenile offender may request **reassessment** two years after the date of the most recent **risk assessment**. Once the juvenile offender reaches age 18, the guidelines for adult offenders are to be followed. The files of such offenders will be transferred from the Family Treatment Program to Sex Offender Screening and Risk Assessment, which will conduct any further assessments.

Reassessment may be requested by parole or probation, any law enforcement agency, the court, or the Sex Offender Assessment Committee at any time, by submission of a statement of reason to Sex Offender Screening and Risk Assessment. These requests will be reviewed by the Sex Offender Assessment Committee and granted if, in the opinion of the committee, sufficient grounds have been stated. **Reassessment** of a juvenile must be ordered by the Juvenile Court having jurisdiction.

Reassessments, particularly those done on the basis of suspicion of recent deviant sexual activity, will include administration of a polygraph and/or plethysmograph (measure of sexual interest) examination. The cost of polygraph, voice stress analysis and/or plethysmograph examinations on referrals by law enforcement will be borne by the Sex Offender Assessment Committee.

Refusal of, or non-compliance with, **reassessment** will result in a written **notification** to law enforcement in the area in which the offender **resides,** and to any supervising agency.

Requests for **reassessment** may be made by phone (870-850-8429); fax (870-850-8446); mail (P.O. Box 6209. Pine Bluff, AR 71611-6209; or E-mail **(adc.sosra@arkansas.gov)**

by completing the form entitled Request for Sex Offender Reassessment.

Forms for requesting **reassessment** will be available from the **ACIC** web site.

Sex Offender Reassessment

Reassessment of (PRINT NAME) _____

(STREET ADDRESS) _____

(CITY, STATE, ZIP CODE) _____

Is requested by (PRINT NAME) _____

(PRINT NAME OF AGENCY REPRESENTED) _____

(MAILING ADDRESS) _____

(CITY, STATE, ZIP CODE) _____

(phone) _____ (FAX) _____

(E-mail address) _____

The reason for reassessment is

[ ] five year reassessment requested by offender

[ ] law enforcement or Community Correction has reason to believe risk level may have changed

[ ] the Court is considering relief for this offender of the requirement to register

Information justifying this request is as follows:

_____

_____

_____

(PLEASE ATTACH ANY ADDITIONAL INFORMATION THAT SUPPORTS THIS REQUEST)

_____

_____ (SIGNED) (DATE) _____

Usually the offender will be contacted within 30 days to set up an appointment.

Check here [ ] if delay is likely to increase risk of further victimization.

MAIL OR FAX THIS FORM TO: **SOSRA**
P.O. BOX 6209
Pine Bluff, AR 71611-6209

FAX (870-850-8446) E-mail SOSRA@arkansas.gov

TERMINATION (Section 15)

The offender whose offenses do not require lifetime registration (not convicted of an **aggravated sexual offense,** or a second or subsequent sexual offense), and who has maintained registration for fifteen years, may apply to the sentencing court for an order **terminating** the registration requirement. The **termination** procedure involves **reassessment** ordered by the court and an evidentiary hearing.

Offenders who have been convicted of (an) **aggravated sexual offense(s)**, are required to maintain lifelong registration. No appeal to the Court, or documentation of rehabilitation or treatment can relieve them of the obligation to register.

Juvenile courts may order **termination** of the registration requirement at any point during the Court's jurisdiction. Once the juvenile has attained his/her majority that places him/her beyond the jurisdiction of the Court, the registration requirements are the same as for an adult offender.

Aggravated Sexual Offense (Section 16)

"**Aggravated sex offense**" means an offense substantially equivalent to "aggravated sexual abuse" as defined in 18 U.S.C. § 2241 as it existed on March 1, 2003, which principally encompasses:

(A) Engaging or attempting to engage in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence; or causing or attempting to cause another person to engage in a sexual act either by using or threatening force against that other person or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

(B) Engaging in sexual acts involving the penetration of victims below the age of twelve (12) by knowingly rendering another person unconscious and then engaging in a sexual act with that other person; or by administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct and engaging or attempting to engage in a sexual act with that other person.

(C) Crosses a state line with intent to: engage or attempt to engage in a sexual act with a person who has not attained the age of twelve (12) years.

(D) Knowingly engages or attempts to engage in a sexual act with another person who has not attained the age of twelve (12) years; or knowingly engages or attempts to engage in a sexual act

under the circumstances in A and B above with another person who has attained the age of twelve (12) years but has not attained the age of sixteen (16) years and is at least four (4) years younger than the alleged offender.

Determination as to whether an offense qualifies as an "**Aggravated Sex Offense**" may depend on the circumstances surrounding the offense. Offenses that are likely to merit qualification as "**Aggravated Sex Offenses**" are denoted with "AGG" on the list of the target offenses. The court must indicate on the judgment and commitment or judgment and disposition form whether or not the offense is an **aggravated sex offense**.

Should there be any confusion regarding whether a sex offense qualifies as an "**Aggravated Sex Offense**" the Court will be contacted during the course of the assessment of the offender.

Individuals convicted of (an) aggravate sexual offense(s) are required to register for life.

SEXUALLY VIOLENT OFFENSE (Section 17)

Sexually violent Offenses include both **Aggravated Sexual Offenses** outlined above and **Sexual Abuse** as defined in 18 USC § 2242. This includes

A. causing another person to engage in a sexual act by threatening or placing that person in fear (but without fear of death, serious bodily injury, or kidnapping (e.g. "If your mommy finds out you did this she won't love you anymore.").

B. engaging in a sexual act with another person who is incapable of appraising the nature of the

conduct (e.g. an infant or severely developmentally disabled person) or is physically incapable of saying "no" (e.g. comatose or sleeping).

SEXUALLY VIOLENT PREDATOR (Section 18)

"**Sexually Violent Predator**" refers to a person who has been convicted of a **sexually violent offense** or a second or subsequent sexual offense and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of predatory sexual violence. The designation is intended to identify those individuals who pose the highest level of threat to the community. The prosecutor should consider asking the court to determine whether an individual is a **Sexually Violent Predator**, if the offense

- Involved multiple victims,
- Was carried on for months or years with any victim,
- Caused or threatened serious harm to the victim,
- Involved bizarre, ritualistic or sadistic behaviors,
- Is the second or subsequent offense against a person,
- Is associated with a mental disorder, developmental disability, or personality disorder,
- Involved attempts on the part of the offender to manipulate him/herself into a position of power or authority over, or establish a relationship with the victim for the primary purpose of violation, exploitation, or victimization.

There are three potential routes for determination as to whether an individual should be designated a "**Sexually Violent Predator**."

1. If the prosecutor finds reason to believe that an offender may pose the highest **level of risk**, the prosecutor will notify the court in the "Prosecutor's Information" that a determination is being sought as to whether an individual is a **Sexually Violent Predator**. Upon adjudication of guilt for a sex offense, the Court shall have the individual sent to the Arkansas Department of Correction for evaluation pursuant to §12-12-918, or request that a member of the assessment team come to the local or regional detention facility where the offender is being housed. In either case the prosecutor is asked to mail, fax or e-mail the "Prosecutor's Information" and any associated documentation needed in preparation for the interview of the offender.

2. Alternatively the court may hold making the determination as to whether an individual is a **Sexually Violent Predator** in abeyance, sentence the offender, and await the completion of Sex Offender Screening and Risk Assessments evaluation of the incarcerated offender. Any individual convicted of a second or subsequent sex offense will have a new risk screening done, unless that individual has already been found by the court to be a **Sexually Violent Predator**.

3. The third procedure for determining whether an individual is a **Sexually Violent Predator** is available through ACA §12-12-922. If qualified examiners find during the course of the screening and **risk assessment** that grounds for believing that an individual may be a **Sexually Violent Predator** exist, a psychologist or psychiatrist

shall conduct further assessment to determine the presence of absence of a mental abnormality or personality disorder that would dispose the offender toward further sexual victimization.

Scheduling for offenders in the custody of the County shall be arranged between the sheriff and Sex Offender Screening and Risk Assessment (SOSRA). The evaluation will take place in a secure setting either at the Diagnostic Unit or the local or regional detention facility. The interview and testing will usually be completed within a day; this may take longer if a polygraph is warranted. Should additional time be needed, the individual may be housed at the Diagnostic Unit for up to three days.

The report of that assessment would be presented to the Sex Offender Assessment Committee, which will determine whether the offender meets the following conditions:

- The instant offense is a **sexually violent offense** as defined above ***OR*** the instant offense represents a second or subsequent conviction under the list of **target offenses** above, or substantially equivalent thereunto;
- There is credible evidence of a pattern of sexually violent acting out either shown by documentation of multiple victims or the persistence of victimization of a victim or victims over a time period of months or years;
- There is evidence of severe physical or mental trauma to the victim(s) that suggests a callousness or blatant disregard for the well being of others, such as threats or acts of serious physical harm to victim, the use of force beyond that necessary to subdue the victim, or sadistic or ritualistic aspects in the sexual assault;

- Establishment of a diagnosis based on the current version Diagnostic and Statistical Manual (DSM) of the American Psychiatric Association.

A copy of the assessment Report will be made available to all members of the Sex Offender Assessment Committee at least 10 days prior to a regularly scheduled meeting.

The Sex Offender Assessment Committee must vote as a whole to agree or disagree as to the assessment of an offender at Level 4, **Sexually Violent Predator.** However, the Chair of the Sex Offenders Assessment Committee will be required to poll any members of the Committee unable to attend a meeting, and document their vote based on the report. An affirmative vote by two-thirds of the members, including polled members, if any, will be required to assess an offender at Level 4, **Sexually Violent Predator**. The member who is designated to process the **administrative review**, if requested, will absent him/herself from the discussion and proceedings.

Sex offenders moving into the State of Arkansas from other states will be considered **Sexually Violent Predators**, if that, or an equivalent, determination has been made by the sending state. If terminologies or criteria differ, Sex Offender Screening and Risk Assessment (SOSRA) will request the offender's **risk assessment** file. SOSRA may make a determination based on that file, or may require the offender to submit to **risk assessment** in Arkansas. All sex offenders at other levels who are moving into Arkansas *must* be **reassessed.** The Department of Community Correction will provide the probationer or parolee a copy of the Sex Offender Screening and Risk Assessment advisement, and will ensure that the **ACIC**'s registration form has been completed.

The recommendation of the Sex Offender Assessment Committee will be provided to the court, as quickly as possible, usually within thirty (30) days of the examiner's gaining access to the offender. Should difficulty in obtaining documents slow the process, or should the next meeting of the Sex Offender Assessment Committee not be scheduled inside that 30-day window, the court will be notified when to expect the report. The **risk assessment** will not be admissible for purposes of sentencing. Should the offender refuse to cooperate or attempt deception at any point during the assessment, the Court will be notified.

The court retains jurisdiction to make a determination as to whether or not an individual is a **Sexually Violent Predator** for one year after sentencing or for the duration of incarceration whichever period of time is longer. Should the Sex Offender Screening and Risk Assessment team develop information that demonstrates the likelihood that an offender is a **Sexually Violent Predator**; this information will be provided to the Prosecuting Attorney who will determine whether a hearing on the matter is warranted.

Any Judgment and Commitment Order or Judgment and Disposition order received by the Arkansas Department of Correction or the Arkansas Department of Community Correction, on which the **Sexually Violent Predator** indicator is checked will be called to the attention of Sex Offender Assessment Committee which will check that a recommendation was made to the Court and a hearing has occurred. If there has been a breakdown in procedure, the Court will be immediately notified so that corrective action may be taken.

At the discretion of the Sex Offender Assessment Committee, a Level 3, High Risk, **notification** may be immediately sent to law enforcement.

The offender will be notified of the decision of the Sex Offender Assessment Committee, and of his/her right to an **administrative review**. If the offender does not exercise his/her right to an **administrative review** within fifteen (15) days of receipt of the advisement, or upon finding that the offender does not **reside** at the address provided by the offender to **ACIC**, a new **Offender Fact Sheet** reflecting Level 4, **Sexually Violent Predator** will be sent to law enforcement. If the offender exercises his/her right to an **Administrative Review**, Level 3 **notification** will be continued until such time as the offender has exhausted his/her administrative remedies.

Upon receipt of the results of the **administrative review**, the offender has thirty (30) days to file a request for a **judicial review** in Pulaski County Circuit Court, or in the County in which the sex offender **resides**, attends an institution of training or education, or does business. If the court serves the Secretary of the Sex Offender Assessment Committee a notice of the petition, **notification** will continue at Level 3. If the offender does not file for a **judicial review** a new **Offender Fact Sheet** reflecting Level 4, **Sexually Violent Predator** will be sent to law enforcement.

If the Secretary of the Sex Offender Assessment Committee is served, the Secretary will make available to the court the **record** of the Committee's findings and copies of all documents related to the process of screening and **risk assessment**. The Secretary may ask the court to seal any

of the documents that could place third parties at risk of harm.

The ruling by the court shall be considered a final judgment. **Notification** at the **risk level** recommended by the court shall be commenced as soon as is feasible.

RECORDS (Section 19)

The Sex Offender Assessment Committee will maintain all documentation gathered and all assessments administered. Original documents will be maintained for at least one year, during which time case files may be digitally imaged. When a year has passed and accuracy of the digital images is demonstrated, the original documents may be destroyed.

Access to documents generated by the Sex Offender Assessment Committee may be granted to **ACIC**, and to any law enforcement agency or court of competent jurisdiction.

The offender may request from Sex Offender Screening and Risk Assessment copies of all reports generated and a list of all documents obtained from other agencies along with the address(es) of any agency(ies). A copy of the tape of the interview may also be requested. All copies of tapes and documents will be done at a cost that reflects the actual cost of making copies. The cost for the coming year will be approved at the annual meeting of the Sex Offender Assessment Committee. This cost must be paid prior to the copying of any materials.

The Sex Offender Assessment Committee will not provide copies of working notes, or of copywrited psychological tests that are restricted to licensed professionals. Nor will

copies of **records** generated by other agencies be released except by written release from the producing agency, or under court order. If such **records** are released, they will be redacted to eliminate addresses of victims or persons making witness statements.

Copies of documents obtained from outside sources will not be provided, except to the originator or as ordered by the court.

These documents are not subject to the Freedom of Information Act.

RESEARCH (Section 20)

The assessment process will be the subject of ongoing research in an effort to develop an Arkansas specific actuarial tool, and to improve the accuracy of the overall **risk assessment** process.

Access for the purpose of research must be requested in writing and is subject to approval by the Arkansas Department of Correction with recommendation by the Sex Offender Assessment Committee.

IMMUNITY (Section 21)

Public officials, public employees, public agencies, and members of the Sex Offender Assessment Committee are immune from civil liability for good faith conduct under Act 989 of 1997, as amended.

Nothing in Act 989 shall be deemed to impose any liability upon, or give rise to a cause of action against, any public official, public employee, public agency, or member of the Sex Offender Assessment Committee for any discretionary

decision to release relevant and necessary information, unless it is shown that the official, employee, agency or Committee member acted with gross negligence or in bad faith.

DISCLAIMER

There is no foolproof method of predicting human behavior.

The best prediction of general risk is based on actuarial studies of large groups. For example, the insurance industry predicts higher rates of automobile accidents for males less than 27 years of age (and charges accordingly). Given a large enough group, the prediction of the rate of accidents will be highly accurate. However, this prediction does not extend to identifying the individuals in that group who will have the accidents. Prediction can be improved by taking into account what we know about an individual. A young person who drinks heavily, has had speeding tickets, skips school and likes to show off his red sports car can be predicted to be a somewhat higher risk than a well behaved, drug free, honor student who is only allowed to drive the family car to school and on errands for mom. Even so, either of these individuals can have an accident.

While the system being used is state-of-the-art and will be improved as statistical and psychological prediction is further refined, there will be Level 4, **sexually violent predators** who do not reoffend. And there will be Level 1, low risk offenders who commit heinous crimes. The prediction being made is the risk posed to the community *if* the individual reoffends. For example, an offender with multiple victims or violence associated with a sex crime is

likely to put a broader segment of the community at more serious risk than an offender with an underage girl friend. Similarly an offender with compulsive sexual habits (E.g. exhibitionism) is prone to repeat acts, but does not pose the same overall **level of risk** to the community as does an offender who offends less frequently, but who is inclined to sadistically or ritually torture his/her victim.

All law enforcement officers involved in the process should make it clear during the process of **notification**, that the protection afforded by enhanced tracking, awareness, supervision and treatment of sex offenders, is not absolute protection. All parents should be encouraged to teach their children about appropriate and inappropriate touching by family, friends, baby sitters, teachers and others with whom their children come into contact.

Assistance and information regarding this is available through the Arkansas Commission on Child Abuse, Rape and Domestic Violence, 4301 W. Markham, Slot 606, Little Rock AR 72205-7199. (Phone 501-661-7975, Fax 501-661-7977). Their web site is http://www.accardv.uams.edu.

REVIEWED UNDER THE ADMINISTRATIVE PROCEDURES ACT, 09/02/2004

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